

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Wayne Baptiste, #59460-004,)	
)	C/A No. 1:10-2526-MBS
Petitioner,)	
)	
vs.)	O R D E R
)	
Mildred Rivera, Warden,)	
)	
Respondent.)	
)	

Petitioner Wayne Baptiste is an inmate in custody of the Bureau of Prisons. He currently is housed at FCI-Estill in Estill, South Carolina. Petitioner, proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner alleges that he is “actually innocent” of a career offender enhancement that was applied at his 2000 sentencing for drug-related charges in the Southern District of Florida.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Shiva V. Hodges for pretrial handling. The Magistrate Judge reviewed the § 2241 petition pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A. On April 6, 2011, the Magistrate Judge filed a Report and Recommendation in which she determined that, because Petitioner is attacking the validity of his sentence, he is required to bring his claim pursuant to 28 U.S.C. § 2255. A § 2255 motion must be brought in the District where the defendant was sentenced. 28 U.S.C. § 2255(a). Because Petitioner previously filed a § 2255 motion in the Southern District of Florida, Petitioner is required to apply to the Court of Appeals for the Eleventh Circuit for permission to file a successive § 2255 motion. See id. § 2255(h). Accordingly, the Magistrate Judge recommended that the § 2241 petition be dismissed without prejudice and without issuance and service of process. Petitioner filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the Report and Recommendation or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. Petitioner’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

May 4, 2011

NOTICE OF RIGHT TO APPEAL

**Petitioner is hereby notified of the right to appeal this order
pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**